

RUSSELL CITY ENERGY CENTER PROJECT (01-AFC-07)
Request for Modifications to Allow the Addition of Another Construction
Laydown/Parking Area (Winton Parking/Laydown Area)

LAND USE
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INTRODUCTION

On May 21, 2012, on behalf of Russell City Energy Center, LLC, Ellison, Schneider & Harris L.L.P. filed a petition with the California Energy Commission (Energy Commission) requesting to make modifications to the Russell City Energy Center project (RCEC) facility. The 600-megawatt facility was certified by the Energy Commission on September 2002 and received an amended approval in October 2007. A petition to extend commencement of construction deadline by one year, from September 10, 2007, to September 10, 2008, was approved on August 29, 2007, and a petition to extend commencement of construction deadline by two years, from September 10, 2008 to September 10, 2010, was approved on July 30, 2008. On August 10, 2011, the CEC approved an amendment, which among other modifications, authorized the addition of four new parcels as construction worker parking and construction laydown areas. Construction of RCEC began November 2010. The power plant site is within the City of Hayward in Alameda County, California.

The proposed Russell City Energy Center Petition for Modification No. 3 (Amendment#3) requests the use of an additional area for construction parking and materials laydown for at least six months and possibly until commercial operation of the RCEC, anticipated in June 2013. The additional construction parking and laydown area (Winton Parking/Laydown Area or proposed site) encompasses six vacant parcels (a total of 15 acres), approximately one mile north of the RCEC project.

The proposed site is located within an industrial district zoned area, with an industrial corridor general plan land use designation (March 2002), and is fully graveled and available for lease. The parking (up to 300 vehicles) area would be segregated from the material storage area by temporary fencing. The type of materials stored include pipe spools and piping components, cable tray and conduit, scaffolding, structural steel, duct work, and fiberglass cooling tower members and components.

Land Use staff has reviewed the petition to amend for potential environmental effects and consistency with applicable City of Hayward land use laws, ordinances, regulations, and standards (LORS). Based on this review, staff determined that the proposed project amendment would result in a less than significant effect and would comply with City of Hayward land use LORS.

LAWS, ORDINANCES, REGULATIONS, AND STANDARDS (LORS) COMPLIANCE

The following City of Hayward land use LORS, presented in **Land Use Table 1** are applicable to the proposed Amendment.

Land Use Table 1
Applicable LORS

Applicable Law	Description
Local	
City of Hayward Municipal Code, Section 10 Planning, Zoning and Subdivisions	
City of Hayward, Zoning Use Chart, Industrial, Open Space & Public Facilities	Temporary use requires an Administrative Use Permit.
Section 10-1.1600 Industrial District (I)	The purpose of the Industrial District is to provide for and encourage the development of industrial uses in areas suitable for same, and promote a desirable and attractive working environment with a minimum detriment to surrounding properties.
Section 10-1.1630 Yard Requirements	Identifies minimum yard requirements.
Section 10-1.1635 Height Limit	Identifies maximum heights for buildings, fences, hedges, and walls.
Section 10-1.1645 Minimum Design and Performance Standards	Applicable sections to the type of proposed use include standards for fences, hedges and walls, parking space locations, surfacing, open storage, and truck loading facilities.
Section 10-1.2715 General Regulations	Identifies uses permitted in all zoning districts
Section 10-1.3125 Administrative Use Permit	Identifies the findings that are necessary for staff to make to allow proposed use.

ANALYSIS

City of Hayward Municipal Code

Staff contacted staff with the City of Hayward Planning Division to confirm the appropriate use the amendment proposes and the appropriate use permitted on Industrial District zoned properties. Planning Division staff from the City of Hayward confirmed the amendment would be considered a temporary use and would require a site plan review. According to the Zoning Chart for Industrial, Open Space & Public Facilities zoned land, a temporary use would require an Administrative Use Permit. The Energy Commission certification incorporates local LORS and makes findings the local

agency would ordinarily make, if not for the Energy Commission's in lieu permitting role. The following sections of the Hayward Municipal Code (zoning code) are applicable to the Amendment:

Section 10-1.1600 Industrial District (I)

Section 10-1.1630 establishes yard requirements for properties in the Industrial District. Applicable yard requirements include a 10-foot front setback and no rear or side yard setbacks. Existing fencing at the front of parking /laydown area is approximately 20 feet back from the sidewalk. No changes are proposed in the yard setback area; therefore, the Amendment is consistent with this section of the Hayward Municipal Code.

Section 10-1.1635 establishes height limits for properties in the Industrial District. The Amendment does not propose any construction, except for the placement of temporary fencing separating the construction parking area from the materials laydown area. A six-foot high chain link fence would separate the parking area (approximately 3 acres) from the construction laydown area on the remaining site (Bryan 2012). No ground disturbance is necessary to install the fence. Existing fencing surrounds the parking/laydown area and the Amendment does not propose removing the fencing. Therefore, the Amendment is consistent with this section of the Hayward Municipal Code.

Section 10-1.1645 establishes minimum design and performance standards required for properties in the Industrial District. The following minimum design and performance standards are applicable to the Amendment:

Lighting, Exterior:

Any proposed lighting needs to be erected and maintained so that light is confined to the property and will not cast direct light or glare upon adjacent properties or public rights-of-way. At this time, no lighting is proposed, but if lighting becomes necessary or desired, direct light or glare needs to be contained on the site. Compliance with Condition of Certification VIS-11 would ensure light and glare do not trespass onto adjacent property or public rights-of-way (Bryan 2012).

Parking, Driveways and Paving:

Parking space dimensions for standard car parking spaces are a minimum 9-foot width and 19-foot length. Compact car spaces are a minimum 9-foot width and 15-foot length. In areas where parking spaces are adjacent to walls or support columns, the width of the affected parking spaces need to be increased by at least one foot on the affected sides to accommodate door swing. The construction parking area is identified on the site plan as approximately 3 acres. Parking spaces are not proposed to be marked out. Based on the proposed parking of 300 construction workers vehicles and assuming each space is a standard car parking space and a rough calculation, parking 300 vehicles would take up a little over one acre out of the 3 acres set aside for parking. The parking area identified on the site plan would be more than sufficient to accommodate up to 300 construction vehicles. Therefore, the Amendment is consistent with this section of the Hayward Municipal Code.

Parking Space Locations:

Parking spaces cannot be located within any required yard setback areas. A ten-foot front yard setback is required on the site. Existing fencing along the front of the site is setback approximately 20 feet from the front of the site. No parking is proposed within this front setback area. The Amendment is consistent with this section of the Hayward Municipal Code.

Driveways and Paving:

Construction vehicle access is proposed through the west gate and access for vehicles loading and unloading construction materials is proposed through the east gate. As vehicles would be entering and exiting at both gates, as described, a two-way driveway width is needed. The minimum width for a two-way driveway is 20 feet. At both gates, there is an existing paved driveway. The width of the west gate is approximately 38 feet wide and the width of the east gate is approximately 35 feet wide. The width of the driveways at the two access gates is sufficient to accommodate two-way access. Therefore, the existing driveway is consistent with two-way access needs for the Amendment and this section of the Hayward Municipal Code.

Truck Loading Facilities:

Loading and unloading of trucks cannot take place on public streets and cannot interfere with on-street traffic, parking or sidewalks. Vehicles loading and unloading construction materials would enter and exit through the east gate, depositing and picking up materials on site. There is more than sufficient room for trucks to unload and load within the site and not interfere with on-street traffic, parking or sidewalks. Therefore, the Amendment is consistent with this section of the Hayward Municipal Code.

Section 10.1.2700 General Regulations

Section 10.1.2715 establishes certain uses permitted in all districts with the intention to amplify and supplement district regulations. In the event of a conflict with the specific district regulations, the more restrictive regulations would apply.

Temporary Use:

Temporary use is among the uses permitted in all districts; however, as the Industrial District regulations would normally require an Administrative Use Permit, if not for the in lieu permitting role of the Energy Commission, and as described above, the more restrictive Industrial District regulations would apply. Staff contacted the Planning Department staff and confirmed the Administrative Use Permit would apply to the Amendment (Buizer 2012).

A temporary use may be permitted in specified zoning districts, subject to a 12-month maximum time limit and subject to the issuance of an Administrative Use Permit. Two, one-year extensions may be considered, subject to Planning Director approval and applicable notification procedures. The temporary use of the site is for at least six months and possibly until commercial operation of the RCEC, anticipated in June 2013.

The duration the site is needed is consistent with the maximum time limit identified in this code. In the event the site is needed beyond June 2013, it seems reasonable that an extension of the time limit could be accommodated if sufficient notification is made to the Energy Commission Project Compliance Manager and in turn, the Planning Department staff with the City of Hayward. The Amendment is consistent with this section of the Hayward Municipal Code.

Section 10-1.3100 Administrative Use Permit

Sec. 10-1-3125 establishes the four findings that must be made to approve an administrative use. The findings are:

- A. The proposed use is desirable for the public convenience or welfare;

The proposed temporary use is necessary to support the construction of the RCEC, which by its nature, generates electricity used by the public. The additional construction laydown area would allow the construction materials to be temporarily stored in this area instead of within the confines of the project site. This would allow materials to be received, as they are ready instead of "just in time." The additional parking proposed as part of the temporary use, is necessary based on current craft workforce requirements to meet the planned commercial operation date. A shuttle would transport workers to the RCEC project site.

- B. The proposed use will not impair the character or integrity of the zoning district and surrounding uses;

According to Section 10-1.1615 in the zoning code for the City of Hayward industrial district, the proposed parking of up to 300 construction worker's vehicles is a consistent use with the industrial district with a site plan review (parking lot) (Section 10-1.1615a(3)(c)). The proposed storage of construction materials could be considered consistent with the district as building materials and industrial equipment and vehicles are permitted as a primary use (Section 10-1.1615a(6)(a) & (b)). The parcels form a u-shaped area that is fenced on all sides. The parcel within the u-shaped area is used as an automobile scrap yard. Industrial buildings and business parks are to the north, east, and south of the proposed laydown area. West of the site is open land with a general plan land use designation of Limited Open Space (LOS). The site is fully fenced and the open space property to the west of the site is blocked by 9-foot block wall along the site's western boundary. The type of temporary use proposed is similar to the surrounding land uses. Compliance with Conditions of Certification NOISE-1, NOISE-2, and NOISE-8 would ensure noise associated with the Amendment is minimized.

- C. The proposed use will not be detrimental to the public health, safety, or general welfare; and

The Winton Parking/Laydown area is graveled and no debris removal, ground clearing or grading would be required prior to use and no construction is proposed. Minor amounts of diesel exhaust may occur with the use of equipment to load/unload material

to be stored in this area. All activities at the site would be conducted in accordance with the Air Quality Construction Mitigation Plan being implemented per the requirements of Condition of Certification AQ-SC2. Without the common sources of fugitive dust (debris removal, ground clearing, grading, and construction) and compliance with AQ-SC2, the type of temporary use proposed would not be detrimental to the public health. Also, no acutely hazardous materials would be stored onsite during RCEC project construction and all activities including materials storage would be required to be carried out in compliance with the Hazardous Materials Conditions of Certification adopted for the RCEC. The Hazardous Materials Conditions of Certification would also ensure the temporary uses proposed are not detrimental to public safety.

The perimeter of the proposed site is fully fenced, thus ensuring greater safety. The activities on the proposed site would be required to comply with standard safety practices. The convenience of an offsite construction parking and laydown area and the provision of a shuttle van to transport workers to and from the RCEC project site safely would help ensure a safer environment near the RCEC project site and construction parking/laydown area, reducing the potential for safety concerns. The Amendment would not have a detrimental effect on public health, safety, and general welfare.

- D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

According to section 10-1.1600 of the City of Hayward zoning ordinance for the industrial district, the purpose of the district is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. The type of temporary use proposed is similar to existing uses on the surrounding properties. Fencing surrounds the perimeter of the parking/laydown area restricting the view into the site. The Amendment proposes installing opaque slats in the section of chain link fence next to the west and east gates fronting Winton Avenue. The installation of opaque slats is consistent with Condition of Certification VIS-1. Land Use Policy 1 and Economic Development Policy 2 both identify the need for infrastructure to support a balance of uses and sound economic development. The Amendment supports the construction activities of the RCEC project, which in turn provides the electrical infrastructure balanced uses and sound economic development rely upon. The Amendment would be in harmony with the City Policies and intent and purpose of the Industrial District zoning code.

CONCLUSIONS AND RECOMMENDATIONS

Staff has reviewed the petition for potential environmental effects and consistency with applicable LORS of the City of Hayward. Based on this review, staff determined that no significant adverse land use impacts would result from the proposed project Amendment and with the findings made by staff that ensures compliance with the Administrative Use Permit, the project would be consistent with all applicable City of Hayward LORS. The proposed amendment would not affect the Land Use conditions of

certification adopted in the September 2002 Energy Commission Decision in the RCEC project proceeding.

PROPOSED MODIFICATIONS TO CONDITIONS OF CERTIFICATION

Staff does not propose any additional conditions of certification or revisions to the adopted conditions of certification, LAND-1 and LAND-2.

REFERENCES

Bryan 2012 – Allison Bryan, EHS Manager, Russell City Energy Center, Personal communication with Lisa Worrall/CEC on June 19, 20 and 21, 2012.

Buizer 2012 – Sara Buizer, Senior Planner, City of Hayward Planning Division, personal communication with Lisa Worrall on June 6, 2012.

HMC 1999 – Hayward Municipal Code, <<http://www.ci.hayward.ca.us/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/index.shtm?tab=2#hmc>>, adopted September 1999.

RCEC 2012 – Russell City Energy Center Petition for Modification No. 3 (01-AFC-7C), Russell City Energy Center, LLC, docketed May 24, 2012.